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OCT 17 1957
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1957

No. [redacted]531

SEABOARD AIR LINE RAILROAD COMPANY,
Petitioner,

v.

JAMES M. BRADDOCK,
Respondent.

SEABOARD AIR LINE RAILROAD COMPANY,
Petitioner,

v.

VIRGIL BRADDOCK,
Respondent.

Petition For a Writ of Certiorari To The Supreme Court of Florida

RESPONDENT'S BRIEF IN OPPOSITION

WILLIAM S. FRATES, and
WALTER H. BECKHAM, JR.
448 Pan American Bank Bldg.
Miami, Florida.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1957

No. 521

SEABOARD AIR LINE RAILROAD COMPANY,
Petitioner,

v.

JAMES M. BRADDOCK,
Respondent.

SEABOARD AIR LINE RAILROAD COMPANY,
Petitioner,

v.

VIRGIL BRADDOCK,
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Petition For a Writ of Certiorari To The Supreme Court of Florida

RESPONDENT'S BRIEF IN OPPOSITION

OPINION BELOW

The opinion of the Supreme Court of Florida is re-

ported at 96 So. 2d 127 and is copied in full in appendix II of the Petition.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3)

QUESTION PRESENTED

Respondent believes no federal question is presented by the Petitioner. The question Petitioner attempts to raise is whether the trial conduct of counsel for plaintiffs was such as to deprive Petitioner of property without due process of law under the Fourteenth Amendment.

STATEMENT

These are actions under Florida law to recover damages for personal injuries to a minor child. After a jury trial and two appeals, the actions have resulted in a $187,411.00 final judgment for the child and a $6,500.00 final judgment for the father. The **per curiam** opinion of the Supreme Court of Florida affirming these final judgments consists of the one word "Affirmed." 96 So. 2d 127.

No federal question of any kind was raised in the court below. The only question concerning misconduct of counsel which Petitioner attempted to raise below was stated as follows:

> "Where plaintiffs' attorney, in his opening statement and jury argument, and over the objections of the defendant's attorney, charged the

railroad with criminal negligence when only ordinary negligence was alleged in the complaint, and, over the repeated objections of defendant's attorney, made numerous improper and highly inflammatory remarks constituting an appeal to sympathy, passion and prejudice, did the trial court err in refusing to grant the railroad's motion for a mistrial on those grounds?" (Pg. 11, Petitioner's brief as appellant below)

In addition, no federal question was raised in the trial court. A reading of the entire transcript of the trial proceedings (R. 6-624) and Petitioner's motion for new trial (R. 638-649) shows that Petitioner never even mentioned the Federal Constitution or the Due Process Clause during the entire trial proceedings.

REASONS FOR DENYING THE WRIT

Respondent respectfully submits that the Petition should be denied for the following reasons:

1. Since no federal question was raised in the courts below, none can be raised in this Court. E.g., CONGRESS OF INDUSTRIAL ORGANIZATIONS v. McADORY, 325 U. S. 472.

2. The claim that the decision below conflicts with NEW YORK CENT. R. CO. v. JOHNSON, 279 U. S. 310, is untrue. The JOHNSON case is simply a holding under federal law as to the type of conduct permitted in federal trial courts. Petitioner has not and can not cite a single case holding that misconduct of counsel in a state court in an action under state law creates a federal question.

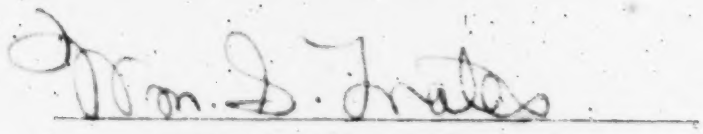
3. The record fails to disclose any prejudicial misconduct of trial counsel. Petitioner's major sensitivity is to the characterization of its conduct as "criminal negligence": Such characterization is clearly legitimate argument to the jury where, as here, the defendant's negligence is so flagrant and a comparative negligence statute (Florida Statutes Ann. 768.06) requires a comparison of fault as between the parties.

4. Since there was no opinion below the case has no importance to anyone but the litigants involved in the case itself.

CONCLUSION

It is respectfully submitted that the Petition should be denied.

Respectfully submitted,



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THIS IS TO CERTIFY that a copy of the foregoing Brief has this 16 day of October, been mailed to Charles R. Scott, Esq., John S. Cox, Esq., 1725 Barnett National Bank Building, Jacksonville, Florida, and to David W. Dyer, Esq., Alfred I. duPont Building, Miami, Florida, Attorneys for Petitioner. I further certify that all requirements of Supreme Court Rule 33 (1) have been followed.

Walter H Beckham Jr